

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA 17-M-1-524 (JWE)

viii

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JONATHAN W. FELDMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES MAGISTRATE JUDGE

11 JAMES P. KENNEDY, JR., ESQ.
12 Acting United States Attorney
13 BY: MELISSA MARANGOLA, ESQ.
14 CRAIG GESTRING, ESQ.
15 Assistant United States Attorneys
16 6200 Federal Building
17 Rochester, New York 14614

16 TREVETT CRISTO SALZER & ANDOLINA, P.C.
17 BY: CLARK J. ZIMMERMAN, JR., ESQ.
18 2 State Street, Suite 1000
Rochester, New York 14614
Appearing on behalf of the Defendant

19 | ALSO PRESENT: Camaryn Lochner, U.S. Probation

20 | Page

22 TRANSCRIBER: Christi A. Macri, FAPR-CRR
23 Kenneth B. Keating Federal Building
100 State Street, Room 2120
Rochester, New York 14614

25 (Proceedings recorded by electronic sound recording,
transcript produced by computer).

PROCEEDINGS

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(**WHEREUPON**, the defendant is present).

MAGISTRATE JUDGE FELDMAN: All right, good morning.

7 We're on for a detention hearing. Are the parties ready to
8 proceed?

MS. MARANGOLA: Yes, Judge.

10 | MR. ZIMMERMAN: Yes, Your Honor.

13 **MS. MARANGOLA:** Judge, we're moving forward pursuant
14 to Title 18 of the United States Code, Section 3142(f)(2)(B).

15 As the Court's aware, this is a five year maximum
16 offense which requires the Government then to show clear and
17 convincing evidence that he is a danger and there are no
18 combination of conditions that would ensure the safety of the
19 community.

That subsection shows that the Government may move under this charge if we can show that there's a serious risk that the defendant will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror in this case, and that's exactly the grounds we're moving

1 under, Judge.

2 I know you're fully familiar with this case as
3 reviewing the complaint, but the main witness in this case is
4 actually the victim, who he does pose a substantial risk of
5 threatening and intimidating prior to trial.

6 Judge, I've run a quick review of the guidelines in
7 this case. Again, I know the Court is aware it's only a five
8 year max, but the quick review of the guidelines would show
9 should he plead guilty he's looking at about 24 to 30 months.

10 So being in jail at this point should really just
11 be focused on the fact whether or not he poses a danger to
12 this victim, and that's what I'm asking the Court to focus on
13 at this time.

14 Looking at the factors under 3142, the (g) factors
15 that the Court has to consider, I'd like to direct your
16 attention to the nature and the circumstances of this charge,
17 which is really all encompassing of the danger he poses to the
18 victim in this case.

19 I mean, the offense itself, Judge, is involving the
20 stalking and terrorizing of the victim in this case for a year
21 long period. And make no mistake, this is a domestic violence
22 situation. It doesn't allege physical abuse necessarily,
23 Judge, but the psychological and emotional abuse that this
24 woman suffered at the hands of this defendant for a year was
25 all encompassing.

1 And I will tell you, I talked to her as recent as
2 yesterday, Judge, and she is absolutely terrorized that this
3 defendant now knows she went to the authorities. She's
4 absolutely terrorized that there will be serious repercussions
5 should he be released.

6 So are her family members, her employers, her work
7 colleagues. Essentially everyone who is in a close community
8 with this victim, Judge, is absolutely terrorized of this man.

9 I'd like to direct your attention, Judge, to page 6
10 of the criminal complaint. It's paragraph 12. And this
11 really shows the defendant's state of mind, Judge. As the
12 Court recalls, he said to the victim in person when she broke
13 up with him or shortly thereafter, "I'm at a crossroads,
14 either I let you walk away and we live our separate lives or
15 short of killing you I destroy every aspect of your life. You
16 tell me what I should do."

17 Approximately a week later he follows up with her
18 and says, "and with regard to our last conversation in the
19 park, I'm still at a crossroads. I must protect my better
20 interests."

21 Judge, that speaks to his state of mind. And as
22 the Court's aware, following that conversation, he absolutely
23 followed through. He attempted to destroy every aspect of
24 this woman's life, and he did both emotionally and
25 psychologically.

1 I'd like to again address the criminal complaint,
2 Judge. It's all spelled out, but some of the things that the
3 defendant did on a daily basis or by daily basis for a period
4 of a year were attempting to gain access to her cell phone
5 records; the Court's aware she kept getting messages from her
6 carrier on a repeated basis saying her account had attempted
7 to be changed.

8 So she would change her cell phone carrier and the
9 telephone number and shortly after that she would be receiving
10 the same messages, which obviously was concerning to her how
11 is this individual finding out so quickly that I changed my
12 cellular telephone number.

13 At that point he started to attempt to hack her
14 employer, who is a local law firm, hack her employer's
15 internet access, hack their -- the total company's e-mail
16 accounts. We have approximately 282 times that that was
17 attempted to be done.

18 Fortunately, we don't have evidence that he was
19 successful in hacking the e-mails of the company, but once
20 that was -- that attempt was completed, he started sending
21 e-mails to her employer trying to get her fired.

22 The Court has reviewed the complaint, I know, and
23 those e-mails are spelled out. Not only was he harassing her,
24 he was harassing her employer, the office manager, her
25 colleagues in an attempt to get her fired.

1 Then just as concerning, her pharmacy starts
2 getting contacted. She stopped refilling her prescriptions
3 automatically and yet suddenly they started up again.

4 Her pharmacy complained that an individual claiming
5 to be her doctor called several times inquiring about her
6 medications. Obviously, a violation of her trust.

7 And when that individual couldn't get the
8 information and they started asking questions, those
9 communications stopped.

10 She would routinely get e-mails from mental health
11 companies that she -- saying that she inquired about mental
12 health facilities across the country and that congratulating
13 her on being the first step to address her own mental health
14 issues.

15 So the defendant was contacting all of these
16 inpatient centers across the country signing her up for
17 services that she didn't do.

18 With that he would send e-mails from anonymous
19 websites or anonymous e-mail companies and providers
20 consistently telling her and urging her to commit suicide;
21 calling her harassing names; contacting her family members,
22 including her ex-husband and other members of her circle,
23 harassing them about her activities, her whereabouts and her
24 relationships .

25 I mean, it was ongoing, again daily basis. Her

1 privacy was being violated and her family members and her were
2 being harassed.

3 Her ex-husband, Your Honor, also had complaints
4 that his financial records were attempted to be reviewed. We,
5 as an investigative technique, looked into that and there did
6 appear to be a substantial number of attempts made into his
7 financial accounts. Fortunately, those were unsuccessful.

12 Her ex-husband during the Super Bowl -- and I say
13 this is important just to show the state of the mind of the
14 defendant and how focused he was on harassing this woman and
15 her ex-husband -- when the Super Bowl this year went into over
16 time, the very minute it went into over time the ex-husband's
17 cable suddenly shut off. And this was a pattern of conduct
18 that the victim kept having reoccur at her home.

19 And shortly before that the defendant -- excuse me,
20 the victim's ex-husband started having his cable shut off. So
21 during probably the biggest game of the year at the most
22 critical moment, instead of focusing on the game he's thinking
23 how can I harass this person and her ex-husband, who there is
24 no connection to, in the most annoying way, and he does it.

25 It was constant 24/7 harassment. On Valentine's

1 Day he sent her flowers saying your friends at the mental
2 health clinic say hello.

3 Judge, it was relentless. And, again, this woman
4 is absolutely terrified, has been for a year, which is why the
5 investigation needed to be secret until we were ready to
6 arrest him.

7 But even now as it stands today she's worse than
8 she has ever been in terms of fear from this defendant now
9 that he's aware that she has gone to local law enforcement.

10 The case is very strong. I know the Court again
11 has reviewed several search warrants and items related to the
12 investigation in this case. You're fully familiar with the
13 items that we've obtained as far as evidence.

14 But quickly the defendant, you know, we've
15 corroborated through the use of subpoenas that this defendant
16 was utilizing the Tor network, which I know the Court is
17 familiar with, to send these e-mails and hide his identity to
18 prevent her from identifying him as the stalker/harasser of
19 all these e-mails.

20 We've confirmed through various means that this
21 defendant was accessing the Tor network at the same or similar
22 time that the harassing e-mails were sent to her.

23 We employed a NIT search warrant to determine that,
24 in fact, the IP address that originated, the fake e-mails that
25 were sent to her employer, actually came from this defendant's

1 home address.

2 So the case is strong. There is no question that
3 this defendant is the individual responsible for the harassing
4 behavior.

5 We also employed a pole camera approximately a
6 block and a half from her house in a residential area. The
7 area (sic) was placed outside a stop sign, Judge, so that law
8 enforcement could best see the vehicles at a stopped condition
9 so we had more time to identify the vehicles that went by.

10 The pole camera was placed in an area that needs to
11 be traveled through to get to the victim's home. I don't want
12 to say what town she lives in, but the defendant and the
13 victim in this case live in two completely separate towns and
14 there would be absolutely no reason for the defendant to be
15 driving by this pole camera. It wasn't on a main road.
16 Again, it's on a residential road that leads directly to her
17 home. He would have no reason to be traveling on that other
18 than to drive by her home.

19 When the victim complained to law enforcement that
20 she observed the defendant driving by her home and, again, his
21 efforts were escalating from cyber stalking to actual
22 stalking, her complaints were confirmed via the pole cam that
23 the defendant was in the area driving a vehicle that was later
24 scene at the Irondequoit Police Department, his place of
25 employment.

1 Neighbors had complained to law enforcement that
2 they also saw suspicious activity driving by her house at
3 certain hours of the day. So his behavior not only impacted
4 the victim in this case, her family members, but neighbors.

5 In addition, Judge, the physical stalking was
6 established when, as stated in the complaint, the victim went
7 to different locations and then was contacted by the defendant
8 shortly thereafter saying I saw you at this location, what are
9 you doing here?

10 For example, she got a hair cut one day as
11 referenced in the complaint. Shortly thereafter, I think the
12 following day, she receives an e-mail from an anonymous source
13 saying -- discussing the hair cut that she received the day
14 before. Obviously, showing that this defendant tracked her,
15 trailed her or stalked her in some way to determine her
16 location at a specific time.

17 She went to Canal Days in Fairport. Again, a town
18 that the defendant does not reside in and really has no
19 business being there, other than the Government's assertion,
20 to observe her activity.

21 But she went to Canal Days, parked her car in her
22 ex-husband's driveway and shortly thereafter her and her
23 ex-husband start getting harassing e-mails and text messages
24 describing her parking in his driveway.

25 I mean, this pattern of conduct is ongoing. One

1 day she went to work on a Saturday, which was unusual, and he
2 commented on that shortly thereafter. So as time went on,
3 Judge, over a year long period, the -- the involvement of the
4 defendant actually escalated as opposed to deteriorated over
5 time as you would expect someone to do as a relationship
6 became further and further distanced from you.

7 The case is very strong. The allegations are
8 incredibly concerning. Like I said, the victim is absolutely
9 terrified.

10 Another factor for the Court to consider is the
11 person's character, his mental condition, his family ties, his
12 employment and I'd like to focus on that.

13 First of all, Judge, I would submit that someone
14 who engages in this pattern of conduct, whether they are
15 admitting it or not, does have some mental issue that needs to
16 be addressed through this Court or through Probation. This is
17 not rational behavior that anyone would engage in over this
18 period of time.

19 His character, Judge. Since yesterday's court
20 appearance when this appeared on the news, myself and law
21 enforcement received several phone calls from concerned
22 citizens. And what has come to fruition and, to my knowledge,
23 has been a pattern of conduct that this is not the first time,
24 this victim is not the first person he's done this to.

25 I was contacted last night by a retired Monroe

1 County lieutenant, Sheriff's Office lieutenant, who was
2 formerly the Chief of Brockport University Police, his name is
3 Robert Kehoe, he said I could say his name in court, his
4 cousin was actually the victim of -- he said, and I quote, a
5 carbon copy situation of what he's read in the criminal
6 complaint.

7 His cousin was in a relationship with this
8 defendant and in 2009 she ended the relationship with the
9 defendant and was cyber stalked, stalked for a period of over
10 one year.

11 That victim as well, Judge, was a female. She was
12 absolutely terrified because the defendant was in law
13 enforcement, and similar to this victim knew that he had
14 friends and colleagues in local law enforcement and, frankly,
15 didn't know what to do with the information. Didn't feel like
16 she could go to local law enforcement.

17 She advised Robert Kehoe of this information
18 because they were family, they were first cousins. And he in
19 turn referred her to a Monroe County Sheriff's victim witness
20 associate. Oddly enough, that victim witness advocate or one
21 of their colleagues contacted the FBI this morning and
22 confirmed that information.

23 Again, based on I believe what they saw in the
24 news, identified his name and said this happened previously,
25 this is incredibly concerning; that woman again didn't want to

1 go forward to law enforcement, but was terrified of him. In
2 that case there were allegations of a forcible rape. I have
3 not had the opportunity since they just came this morning
4 to --

5 **MR. ZIMMERMAN:** Judge, I really have to object --
6 and I'm sorry to interrupt, but I think we're way outside the
7 bounds here for that to even be brought up.

8 I understand she can make a proffer, but that I
9 think is way outside the boundaries of what's allowed.

10 **MAGISTRATE JUDGE FELDMAN:** Let me just ask. Is
11 there the potential here for further charges? Is that what
12 you're getting at?

13 **MS. MARANGOLA:** I'm showing you his history, Judge,
14 and his course of conduct. That's really what I'm getting at
15 here.

16 **MR. ZIMMERMAN:** Well, there's no history of this
17 alleged rape. That's what I'm objecting about.

18 **MAGISTRATE JUDGE FELDMAN:** I understand. Is
19 there -- is there a continuing investigation here?

20 **MS. MARANGOLA:** Yes, Judge, we're going to look into
21 that obviously.

22 **MAGISTRATE JUDGE FELDMAN:** Okay.

23 **MS. MARANGOLA:** And it would be potential 404(b). I
24 mean, it will be relevant at this -- at this juncture or down
25 the road in this case.

1 And I would submit it is absolutely relevant if the
2 defendant -- this was a one time deal, that's something for
3 the Court to consider. But the fact that there's a pattern of
4 conduct and this happened with another woman in 2009 is
5 something that this Court certainly needs to consider for
6 dangerousness.

7 I would note that this morning, Judge, the
8 defendant's own brother, who is a Catholic priest in Greece,
9 contacted the FBI with substantial concerns saying he felt
10 important to contact them and ask that his brother not be
11 released due to safety concerns.

12 I haven't -- again, we have to follow-up on those,
13 but there was another individual, a retired law enforcement
14 officer, who previously worked with the defendant, said that
15 he is one of the most manipulative individuals that he's ever
16 come in contact with. And when this defendant was hired by
17 Irondequoit Police Department, this law enforcement officer
18 actually contacted them directly and said you're going to
19 regret that based on his character.

20 So again in 24 hours, less than 24 hours these are
21 the types of information that are coming forward, Judge. His
22 own family member; a prior victim; and a law enforcement
23 colleague expressing their grave concern over this defendant's
24 release.

25 I would note, Judge, that I've had the opportunity

1 to review -- well, before I go there, excuse me, I would note
2 that yesterday the defendant was actually interviewed by law
3 enforcement after he was advised of his *Miranda* warnings,
4 Judge.

5 He did not admit any contact -- any contact with
6 the victim. In fact, he made several denials that we know
7 were untruthful and we anticipate filing an additional charge
8 under Title 18, United States Code, 1001.

9 Specifically, he indicated he's aware of a Tor
10 network, but he's never used it on his computer. He has no
11 reason to, which based on our search warrants and the
12 electronic information we seized as part of this investigation
13 we know not to be true.

14 He said he hasn't seen the victim in seven months,
15 he hasn't had any reason to go by her house or her area of
16 employment, he's not contacted her at all, which again based
17 on the evidence in this case we know to be untrue.

18 I would note again I have to show that there are no
19 reasonable combination of conditions that can be imposed here
20 to assure her safety; and I reviewed the Pretrial Services
21 report from the Probation Office and they are in agreement
22 with that. They don't feel that there is any combinations
23 that they can set.

24 And I know this is an unusual case, given the fact
25 that the maximum sentence is five years, but these are unusual

1 circumstances. And when I thought about this from our last
2 court appearance to today, I don't think that electronic
3 monitoring, home confinement can reasonably assure this
4 victim's safety. I really don't, and Probation is in
5 agreement with that.

6 It is easy for me to stand here and say Probation
7 can monitor him. But when you are actually the person
8 monitoring him and going to this individual's house, the fact
9 that he is a police officer, had access to guns -- and I will
10 note there are three currently in his house still that would
11 need to be removed -- when you are actually the person going
12 there to come into contact with someone who has been trained
13 physically as a law enforcement officer, is fully aware of law
14 enforcement procedures and things, it puts Probation at a
15 severe disadvantage walking into his house on any given day,
16 and I completely understand their concerns.

17 One of the major concerns that I have with respect
18 to this victim again is that this is a domestic violence
19 situation. It is emotional and physical abuse that has gone
20 over for a period of time.

21 Now with these types of situations, the point that
22 the victim leaves, the point that the abuser is no longer in
23 control is the very time that these situations escalate.

24 I have no confidence that an ankle bracelet is
25 going to prevent him from driving to her home, doing something

1 to hurt her or one of her family members, given the fact that
2 again he no longer is in control; he is suspended from his
3 job; he's essentially lost a significant amount of his life,
4 his livelihood, all of his security is gone, Judge.

5 So this is the pivotal moment that something
6 terrible could happen, and the Government does not feel
7 comfortable saying that him being on an electronic monitoring
8 bracelet is enough to protect her.

9 I would note also that the Irondequoit Police
10 Department has, with my understanding, initiated proceedings
11 to suspend him without pay. Right now he's again being
12 suspended with pay, but that's just due to a procedural
13 requirement. They've already started proceedings. So he's
14 essentially in the process of losing his job.

15 Again, he's in the news. His family's aware of it.
16 He knows the victim is no longer under his control and has
17 gone to the authorities despite what he told her.

18 So for all those reasons, Your Honor, I truthfully
19 cannot say that there are any combinations that would assure
20 her safety.

21 **MAGISTRATE JUDGE FELDMAN:** Okay, thank you.
22 Mr. Zimmerman.

23 **MR. ZIMMERMAN:** Thank you, Your Honor. This statute
24 that Mr. Rosica's charged under carries or alleges a wide
25 range of offenses from threaten to kill to intimidation and

1 harassment.

2 I don't believe that even despite what has been
3 stated by the Government, that there's been any allegation of
4 threats to kill. So I think the main focus of the strength of
5 their case surrounds allegations of intimidation and
6 harassment.

7 **MAGISTRATE JUDGE FELDMAN:** Do you think that the
8 language that the defendant allegedly used as set forth in
9 paragraph 12 of the criminal complaint would be a threat to
10 kill?

11 **MR. ZIMMERMAN:** Is that the allegation about --

12 **MAGISTRATE JUDGE FELDMAN:** I'm at a crossroads,
13 yeah.

14 **MR. ZIMMERMAN:** Well, I think it says just the
15 opposite. I'm at a crossroads, I can either move on or I can
16 ruin your life short of, I think, killing you, something like
17 that.

18 So, if anything, that statement, if accepted as
19 true, and the prior allegations of stalking, I guess, that
20 Ms. Marangola raised, show just that there is no threat of
21 physical violence, certainly no threat of the most extreme
22 here, threaten to kill or cause serious physical injury.

23 The prior allegations that Ms. Marangola cited from
24 2009, I believe, show just the opposite. So if you accept
25 this complaint as true and you accept that as true, it seems

1 to, again accepting -- we're all at allegations here, Judge.

2 **MAGISTRATE JUDGE FELDMAN:** Mm-hmm.

3 **MR. ZIMMERMAN:** It would show just the opposite,
4 that there is no threat of physical -- physical bodily harm.
5 And Ms. Marangola said at the end that there's allegations
6 here of physical abuse. There are no allegations of physical
7 abuse against the complainant in this case.

8 **MAGISTRATE JUDGE FELDMAN:** Where do you think
9 encouraging someone repeatedly to commit suicide falls on that
10 scale?

11 **MR. ZIMMERMAN:** Well, again, accepting those
12 statements as true -- and I disagree with Ms. Marangola as to
13 the strength of the People's case. She says, well, they have
14 various means of establishing that.

15 However, I'm not here to besmirch at all the
16 complainant. I'm not going to use her name, but upon
17 information and belief, there have been some attempts by her
18 or at least psychiatric episodes on her behalf.

19 Now, that cuts both ways, I understand that. But
20 what the Court, I think, has to examine is, is Mr. Rosica a
21 threat to commit violence against this complainant or other
22 members of the community.

23 And she now has support not only of the Federal
24 Government, but it sounds like many other agencies,
25 co-workers, friends.

1 And so to answer your question directly, a
2 suggestion or an innuendo is a far cry from an actual attempt
3 to commit physical bodily harm or violence against an
4 individual.

9 But if the Government is correct and just using the
10 kinds of things that are alleged here in the complaint about,
11 you know, sending someone links on how to commit suicide and
12 how to commit suicide in painless ways and threatening to
13 reveal personal and confidential information to the victim's
14 child about mental health issues --

22 **MR. ZIMMERMAN:** Well, I think we have to look at a
23 little bit of a future aspect here because the standard is, is
24 he a threat in the future.

25 | MAGISTRATE JUDGE FELDMAN: Mm-hmm.

1 **MR. ZIMMERMAN:** The Government can make arguments
2 all day long and you seem to be making arguments that those
3 indicate potential acts or threats of violence. I understand
4 that.

5 **MAGISTRATE JUDGE FELDMAN:** Right.

6 **MR. ZIMMERMAN:** But assuming those to be true, those
7 are past allegations and these stem over a year from what I
8 understand from the Government's case, but are there
9 reasonable alternatives to ensure the safety of the
10 complainant?

11 And I would suggest to the Court that there are.
12 There are several, including the fact that the complainant
13 reported this to the authorities, to the fact that there's
14 been a -- I'm not sure when the investigation began, but it's
15 been an extensive investigation resulting in the filing of
16 these allegations.

17 That in and of itself, I believe, ensures the
18 safety of this complainant. She knows where to go to get
19 assistance, she knows how to do that. She has those already
20 in place.

21 And, frankly, Mr. Rosica, who's been a police
22 officer for 13 plus years, is fully aware of the consequences
23 of violating any Order of Protection or going anywhere near
24 the complainant or violating any court order that would be in
25 place.

1 And the fact that he has been a police officer for
2 13 years addressing the -- some of the issues of character, in
3 addition to being a volunteer fireman, in addition to being
4 with the -- I believe it's called the Badge of Honor, and
5 nobody comes forward with all these eyes -- educated law
6 enforcement, members of the community eyes -- with any
7 concerns, I think cuts against the fact that there's some
8 serious underlying mental health issues going on here or
9 there's really a great let down in our law enforcement.

10 **MAGISTRATE JUDGE FELDMAN:** Assuming that the
11 Government can tie the defendant's conduct to the allegations
12 in the complaint, does that not raise questions in your mind
13 about the mental health of your client?

14 **MR. ZIMMERMAN:** Well, I would concede it would.
15 There would be some mental health issues. It's the level of
16 that. Frankly, Judge, we all have some degree of mental
17 health issues. I'm not trying to be cute about this.

18 But it would also advocate for some sort of
19 specialized release so he could seek treatment. If he's
20 incarcerated, he's not going to get that sort of specific
21 mental health treatment, and I would certainly recommend that
22 that be carried through. So that could be by consent a
23 condition of his release.

24 But, again, Judge, the pattern of conduct, and
25 Ms. Marangola stated it, has been to harass and intimidate,

1 not to cause bodily injury. In fact, there has been no
2 injury, there's been no physical abuse in the past and these
3 recent allegations that have come up, I can't comment on
4 those, I'd ask the Court not to consider those.

5 Present in court on support -- in support of
6 Mr. Rosica are his sister and his estranged wife, who I
7 referred to yesterday, I believe. They're both here in
8 support of him.

9 His brother that Ms. Marangola mentioned, he is a
10 priest. He's in Toronto, Canada from what I believe, and he
11 has very little contact, if any, with Mr. Rosica.

12 The people who do have contact with him are here,
13 his family members. I believe he has quite an accomplished
14 family. In addition to his brother the priest, he has a
15 sister a nun, she's not here, but I believe she's supportive
16 of him.

17 I think that the Court can impose special
18 conditions which would reasonably ensure the safety of the
19 complainant and other members of the community by imposing
20 home incarceration, by imposing electronic monitoring, by
21 imposing a condition obviously that he not possess any
22 weapons, something he's more than willing to do.

23 There was some talk yesterday about imposing a
24 condition that he not have access to computers. Certainly he
25 would be in agreement with that.

1 Depending on the Court's ruling, I may ask that he
2 be allowed to maintain a smart phone, but we would certainly
3 comply with any conditions that the Court imposes so that,
4 one, he can aid in his defense; two, he would seek mental
5 health counseling or full psychological evaluation; three, he
6 does have several family responsibilities, including the
7 health of his wife, they do co-parent as much as they can
8 their 17-year-old son.

9 So I'd ask the Court to evaluate this on the
10 spectrum of the allegations. Ms. Marangola can theorize that
11 this is just, you know, building to a point where there's
12 certainly going to be something, but there's been no clear and
13 convincing evidence that there's been any attempt at actual
14 physical bodily harm on behalf of Mr. Rosica against any
15 individual at this point.

16 And I think the fact that just because if you take
17 all these as true and somebody has some mental health issues,
18 that doesn't equate with violence.

19 So I would ask the Court to impose special
20 conditions of release and obviously, as I stated, we would
21 comply with anything the Court orders.

22 **MAGISTRATE JUDGE FELDMAN:** Thank you, Mr. Zimmerman.

23 **MR. ZIMMERMAN:** Thank you.

24 **MAGISTRATE JUDGE FELDMAN:** Anything else?

25 **MS. MARANGOLA:** Just very briefly, Your Honor. As

1 Mr. Zimmerman pointed out, the defendant is fully aware at
2 this point what these -- the ramifications for his actions
3 would be, and I would submit as a law enforcement officer for
4 13 years, while he was sworn to uphold the law and protect and
5 serve the community, he was fully aware that stalking this
6 woman was illegal and he did it anyway. That's it.

7 **MAGISTRATE JUDGE FELDMAN:** Okay, the Government's
8 proof closed?

9 **MS. MARANGOLA:** Yes, Judge.

10 **MAGISTRATE JUDGE FELDMAN:** Defense proof closed?

11 **MR. ZIMMERMAN:** Yes, Your Honor.

12 **MAGISTRATE JUDGE FELDMAN:** All right. All right, I
13 have listened to the proffer of both the Government and the
14 defense. I am ready to render a decision.

15 Mr. Rosica, the Government has moved to detain you
16 without bail and it's my job to determine whether that motion
17 should be granted.

18 There are a variety of factors I'm required to
19 consider and one of them, which we've talked about today, is
20 the strength of the Government's case. And I think it's kind
21 of difficult for me to explain to you why that's something I
22 should consider because you're presumed innocent, but to the
23 extent the strength of the Government's case reflects on the
24 character of the accused and the nature and circumstances of
25 the offense as it relates to bail, it is something that I can

1 and must consider.

2 I think as everyone acknowledged here, I have been
3 involved with the case for a while now; I've signed several
4 search warrants and signed the complaint. So I am aware of
5 the strength of the Government's case and I think it is a
6 strong case.

7 I think the evidence suggests that you used
8 sophisticated and complex techniques to terrorize someone
9 here. And the FBI, through their own technical expertise, has
10 appeared to directly tie you to that, what can fairly be
11 described as, at least I described it based on what I've read
12 in the complaint, as something approaching sadistic behavior.

13 The other thing I can consider is the character of
14 the accused and the nature and circumstances of the offense
15 insofar as they would allow me to consider whether you would
16 comply with any conditions of release.

17 I say this in many bail situations: Predicting
18 human behavior is beyond me. If there was a computer program
19 or a litmus test I could give or use to predict whether you
20 would comply with conditions of release, I certainly would
21 employ it right now.

22 You really present a conundrum in terms of
23 different aspects of your life, but there isn't such a test or
24 a computer program I can use. So we judges are left to use
25 our common sense and our experience and examining what we do

1 know about an accused to see if there are any indications that
2 if released, the person would present a danger.

3 And here the danger that the Government has moved
4 upon is found in 18, U.S.C., Section 3142(f)(2)(B), and it
5 requires the Government to demonstrate to me that you will
6 present a serious risk of threatening, injuring or
7 intimidating a prospective witness. In this case the
8 Government said it's the victim.

9 Now, the crime you're charged with is commonly
10 referred to as "cyber stalking," but in some cases the word
11 stalking really doesn't adequately describe the criminal
12 behavior that's charged.

13 And I know Mr. Zimmerman has asked me to analyze
14 and evaluate your conduct on the spectrum of cyber stalking,
15 and I respectfully disagree with him to the extent that he
16 minimizes what the behavior here is.

17 I think the FBI has developed strong evidence that
18 you terrorized the victim in a very sophisticated and
19 deliberately secretive method.

20 The Government has proffered in the complaint,
21 which I incorporate into my decision here, found that you used
22 this Tor network and by using the Tor network you tried to
23 make sure that you could evade detection by both the victim
24 and law enforcement by ensuring that the threats and
25 intimidating behavior that you allegedly used could never be

1 traced back to your own computer or your own IP address.

2 I don't think this is a case of simple cyber
3 bullying. The Government's proffer is that you engaged in a
4 long-term campaign to abuse and torment this victim. The
5 Government's proffer included evidence that you went so far as
6 to encourage your victim to commit suicide by sending her
7 website links on how to do that; by sending her anonymous
8 texts on how to go to sites that include 10 minute suicide
9 guide and painless ways to commit suicide.

10 The Government complaint has proffered that you
11 threatened to reveal very personal and confidential medical
12 information to the victim's child about the victim.

13 That you tried to hack into the victim employer's
14 computer system.

15 That you tried to hack into the victim's University
16 of Rochester medical records.

17 That you set up fake e-mail accounts and then
18 e-mailed the victim's supervisors at work telling them to
19 investigate her.

20 Disparaging her with claims of mental illness and
21 medications she's taking.

22 And this is not limited to cyber conduct. The
23 Government has proffered that you physically surveilled the
24 victim and followed her, sending her pictures from fake e-mail
25 addresses to show that you're observing her.

1 Texting her at night or e-mailing her telling her
2 to remember to shut the lights off.

3 Calling her pharmacist and inquiring about the
4 medications she's on, multiple times a day over the course of
5 many months.

6 And even impersonating the victim's primary care
7 physician in an attempt to gain medical information.

8 So I say this because the crime, I think, is not
9 one of a momentary lapse of judgment, but really a campaign of
10 abuse and terror committed over the course of a year.

11 And I say that because in terms of the bail issue I
12 have to consider, if I were to set conditions of bail, could I
13 count on you following them?

14 Now, again you're presumed innocent, but as a law
15 enforcement officer there can be no doubt that if you did
16 these things, you knew at the time you were doing them that
17 they could lead to the moment we're both presented with right
18 now where you were apprehended.

19 And despite that risk to yourself, to your family,
20 your job, you were willing to take that risk, according to the
21 Government, and that really concerns me in terms of what
22 you're capable of risking if I was to set conditions of
23 release.

24 The Probation Department recommends detention, and
25 I incorporate their findings into this decision.

1 I guess the bottom line is that the Government has
2 presented evidence of behavior that's unpredictable,
3 irrational and certainly dangerous.

4 The level of psychological disturbance here is so
5 persuasive, that I don't believe I can reasonably set
6 conditions that would assure me that you would comply with any
7 release conditions which would reasonably assure the safety of
8 the victim. Therefore, it's my decision that you should be
9 detained pending trial.

10 Now, Mr. Zimmerman can explain to you that my
11 decision can be reviewed by a District Court judge and that
12 judge has to review it *de novo* and he can explain that process
13 to you.

14 I'll do everything I can, because you're detained
15 with the presumption of innocence, to move the case along, but
16 at least based on the evidence that I know now, I think the
17 law requires me to detain you. So that's my decision.

18 Would you like to set up a preliminary examination
19 date? Would you like some time to talk to the Government?

20 **MR. ZIMMERMAN:** I would like some time, Your Honor.
21 If we could set a date, just a control, and I'd waive any
22 speedy trial --

23 **MAGISTRATE JUDGE FELDMAN:** Would you like about 30
24 days or more?

25 **MR. ZIMMERMAN:** Actually, Judge, can we have --

1 would that be enough time --

2 **MS. MARANGOLA:** Yes, Judge, I'll attempt to get
3 discovery out in the next -- if I can have ten days, two
4 weeks, because it's voluminous at this point.

5 **MR. ZIMMERMAN:** Based on that timeframe --

6 **MAGISTRATE JUDGE FELDMAN:** -- if you get discovery
7 within two weeks --

8 **MR. ZIMMERMAN:** -- 30 days would be fine, Judge.

9 **MAGISTRATE JUDGE FELDMAN:** 30 days? Okay.

10 April 4th at 2 p.m., is that okay?

11 **MR. ZIMMERMAN:** If I could just check real quick,
12 Judge?

13 **MS. MARANGOLA:** I'm sorry, Judge, I missed the date.

14 **MAGISTRATE JUDGE FELDMAN:** April 4th.

15 **MS. MARANGOLA:** That's fine. Mr. Gestring will be
16 taking over the case in my absence.

17 **MAGISTRATE JUDGE FELDMAN:** Okay.

18 **MR. ZIMMERMAN:** Judge, I'm actually on trial --
19 April 4th you said?

20 **MAGISTRATE JUDGE FELDMAN:** Yeah. Would you like
21 later in that week?

22 **MR. ZIMMERMAN:** Could we -- could we do earlier? So
23 March 31st?

24 **MAGISTRATE JUDGE FELDMAN:** How's April 1st?

25 **MR. ZIMMERMAN:** I think it's a Saturday.

1 MAGISTRATE JUDGE FELDMAN: Oh, I'm sorry.

2 MR. ZIMMERMAN: I mean, I'll certainly --

5 | MR. ZIMMERMAN: Correct.

8 MR. ZIMMERMAN: Thank you.

11 | MR. GESTRING: Good to go, Judge, thank you.

14 MS. MARANGOLA: Did you exclude the time, Judge?

15 MR. ZIMMERMAN: I did say I would.

23 Therefore, the time between today and the adjourn
24 date is excluded from the speedy indictment clock in the
25 interest of justice.

MS. MARANGOLA: Thank you.

MR. GESTRING: Thank you, Judge.

MAGISTRATE JUDGE FELDMAN: Thank you.

(WHEREUPON, proceedings adjourned at 11:28 a.m.)

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CERTIFICATE OF TRANSCRIBER

8 In accordance with 28, U.S.C., 753(b), I certify that
9 this is a true and correct record of proceedings from the
10 official electronic sound recording of the proceedings in the
11 United States District Court for the Western District of New
12 York before the Honorable Jonathan W. Feldman on March 3rd,
13 2017.

14

15 S/ Christi A. Macri

16 Christi A. Macri, FAPR-CRR
Official Court Reporter

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